

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: D [REDACTED] Casados	Team: Team # 5	CCRB Case #: 201116562	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Fri, 12/23/2011 11:55 AM	Location of Incident: Van Duzer Street and Hillside Avenue		Precinct: 120	S.O.L. Expires: 06/23/2013	
Date/Time CV Reported Tue, 12/27/2011 8:49 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/29/2011 11:08 AM		
Complainant/Victim		Type	Home Address		
1. C [REDACTED] R [REDACTED]		Comp/Victim	[REDACTED]		
Subject Officer(s)		Shield	TaxID	Command	
1. POM D [REDACTED] P [REDACTED]		[REDACTED]	[REDACTED]	120 PCT	
2. POM S [REDACTED] L [REDACTED]		[REDACTED]	[REDACTED]	120 PCT	
3. POM Christophe Hebert		24213	943363	120 PCT	
Witness Officer(s)		Shield No	Tax No	Cmd Name	
1. POF K [REDACTED] W [REDACTED]		[REDACTED]	[REDACTED]	120 PCT	
Officer(s)		Allegation		Investigator Recommendation	
A . POM D [REDACTED] P [REDACTED]		Abuse of Authority: PO D [REDACTED] P [REDACTED] stopped the car in which C [REDACTED] R [REDACTED] was an occupant.		A . Substantiated	
B . POM Christophe Hebert		Abuse of Authority: PO Christopher Hebert frisked C [REDACTED] R [REDACTED]		B . Substantiated	
C . POM Christophe Hebert		Abuse of Authority: PO Christopher Hebert searched C [REDACTED] R [REDACTED]		C . Substantiated	
D . POM D [REDACTED] P [REDACTED]		Abuse of Authority: PO D [REDACTED] P [REDACTED] searched the car in which C [REDACTED] R [REDACTED] was an occupant.		D . Substantiated	
E . POM S [REDACTED] L [REDACTED]		Abuse of Authority: PO S [REDACTED] L [REDACTED] searched the car in which C [REDACTED] R [REDACTED] was an occupant.		E . Substantiated	
F . POM S [REDACTED] L [REDACTED]		Discourtesy: PO S [REDACTED] L [REDACTED] spoke rudely to C [REDACTED] R [REDACTED]		F . Unsubstantiated	
G . POM S [REDACTED] L [REDACTED]		Abuse of Authority: PO S [REDACTED] L [REDACTED] refused to provide his shield number to C [REDACTED] R [REDACTED]		G . Unsubstantiated	
H . POM S [REDACTED] L [REDACTED]		Abuse of Authority: PO S [REDACTED] L [REDACTED] threatened to arrest C [REDACTED] R [REDACTED]		H . Unsubstantiated	
I . POM S [REDACTED] L [REDACTED]		Other: PO S [REDACTED] L [REDACTED] failed to prepare a memo book entry as required.		I . Other Misconduct	

Case Summary

C [REDACTED] R [REDACTED] reported the following complaint over the telephone with the Internal Affairs Bureau on December 27, 2011, generating the original log number 11-59577 (encl. 4). The CCRB received the complaint on December 29, 2011 (encl. 5).

On December 23, 2011, at approximately 11:50 a.m., C [REDACTED] R [REDACTED] was stopped at Hillside Avenue and Van Duzer Street in Staten Island on suspicion of engaging in a drug transaction. The following allegations resulted:

- **Allegation A—Abuse of Authority: PO D [REDACTED] P [REDACTED] stopped the car in which C [REDACTED] R [REDACTED] was an occupant.** Because the preponderance of the evidence indicated that PO P [REDACTED] ordered the stop of Mr. R [REDACTED] without reasonable suspicion that he had committed a crime, it is recommended that **Allegation A** be substantiated.
- **Allegation B—Abuse of Authority: PO Christopher Hebert frisked C [REDACTED] R [REDACTED]** The investigation determined that PO Hebert frisked Mr. R [REDACTED] without a sufficient reason to believe Mr. R [REDACTED] had a weapon. It is therefore recommended that **Allegation B** be substantiated.
- **Allegation C—Abuse of Authority: PO Christopher Hebert searched C [REDACTED] R [REDACTED]** The investigation determined that PO Hebert had an insufficient basis for searching Mr. R [REDACTED] because he felt a hard object that could not have been reasonably mistaken for a weapon, and it is recommended that **Allegation C** be substantiated.
- **Allegation D—Abuse of Authority: PO D [REDACTED] P [REDACTED] searched the car in which C [REDACTED] R [REDACTED] was an occupant.**
- **Allegation E—Abuse of Authority: PO S [REDACTED] L [REDACTED] searched the car in which C [REDACTED] R [REDACTED] was an occupant.** Because the investigation determined that PO P [REDACTED] and PO L [REDACTED] searched Mr. R [REDACTED]'s car without probable cause, it is recommended that **Allegations D and E** be substantiated.
- **Allegation F—Discourtesy: PO S [REDACTED] L [REDACTED] spoke rudely to C [REDACTED] R [REDACTED]** Due to conflicting statements, the investigation could not determine by a preponderance of the evidence if PO L [REDACTED] told Mr. R [REDACTED] "We ask the fucking questions," and it is recommended that **Allegation F** be unsubstantiated.
- **Allegation G—Abuse of Authority: PO S [REDACTED] L [REDACTED] refused to provide his shield number to C [REDACTED] R [REDACTED]** Because the investigation could not determine with a preponderance of evidence that PO L [REDACTED] covered up his shield number and therefore refused to provide it, it is recommended that **Allegation G** be unsubstantiated.
- **Allegation H—Abuse of Authority: PO S [REDACTED] L [REDACTED] threatened to arrest C [REDACTED] R [REDACTED]** Due to conflicting statements, the investigation could not determine if PO L [REDACTED] threatened to arrest Mr. R [REDACTED] and it is recommended that **Allegation H** be exonerated.
- **Allegation I—Other Misconduct: PO S [REDACTED] L [REDACTED] failed to prepare a memo book entry as required.** Because PO L [REDACTED] participated in the stop of Mr. R [REDACTED] and did not make a memo book entry about it as required under Patrol Guide Section 212-08, it is recommended that PO L [REDACTED] be cited for **Other Misconduct** for **Allegation I**.

Results of Investigation

Civilian Statement

Complainant/Victim: C [REDACTED] R [REDACTED]

- *Mr. R [REDACTED] a black male, 5'9" tall, 170 pounds with black hair and brown eyes, was 39 years old at the time of the incident. He is self-employed as a video producer.*

IAB Testimony

Mr. R█████ called IAB on December 27, 2011, and reported that four officers stopped him, searched him, searched his car, and an unspecified officer told him, "We ask the fucking questions" (encl. 4).

CCRB Testimony

Mr. R█████ provided a telephone statement on January 4, 2012 (encl. 6). Mr. R█████ was interviewed at the CCRB on January 10, 2012 (encl. 7). His statements were consistent.

On December 23, 2011, at approximately 11:50 a.m., Mr. R█████ drove to 223 Broad Street in Staten Island, which is the location of a 99-cent store, in a 2001 Chrysler Sebring to buy detergent. He made his purchase and left the 99-cent store in about three minutes. He was in a hurry to make it to a laundromat at Hillside Avenue and Van Duzer Street before noon so he could receive a discount for arriving before then. He drove straight to the laundromat, and it took him about five minutes. He parked in the laundromat's parking lot, turned off his car and stepped out. He made it no farther than the front of his car when four police officers dressed in plainclothes walked toward him. Prior to this, he was unaware officers wanted to stop him. The tallest officer, PO S████ L████ who was identified by the investigation, told him to take his hands out of his pockets and walk to the back of his car. He did as instructed.

PO L████ and PO D████ F████ whose name Mr. R█████ later learned, walked up to his car. Mr. R█████ was not sure which officer went to which side of his car, but he thought he recalled PO L████ going to the passenger side and PO P████ going to the driver's side. PO Christopher Hebert, a w████ male who was 5'8" to 5'9" tall, and PO K████ W████ the only female officer on scene, approached Mr. R█████. Both PO Hebert and PO W████ were identified by the investigation. PO Hebert searched Mr. R█████ by placing his hands inside his front and back pants pockets and removing his wallet and keys. Mr. R█████ was not sure what PO Hebert did with his belongings, but at the end of the incident he recalled holding them. PO Hebert unzipped Mr. R█████'s jeans and pulled back the waistband of his jogging shorts (which he was wearing for underwear). PO Hebert did not pull down Mr. R█████'s jogging shorts, but looked down and saw his private parts. PO Hebert released his jogging shorts and ended the search, but he did not zip up Mr. R█████'s jeans.

While PO Hebert was searching Mr. R█████ PO W████ asked him why he was in such a hurry and what he had done at the 99-cent store. Mr. R█████ told her he was in a rush to receive the discount and that he had bought detergent at the 99-cent store, and the detergent was sitting on his front passenger seat inside of a black plastic bag. PO W████ walked away to her vehicle. Meanwhile, PO L████ and PO P████ searched Mr. R█████'s car. Mr. R█████ asked them why, and PO L████ responded, "We ask the fucking questions."

Mr. R█████ stated both officers appeared to look at the floor boards of his car, and whichever officer was on the passenger side opened the glove compartment. PO L████ opened the center console. There was a small bag with a zipper in the center console, and inside the bag was a pair of headphones. PO L████ opened the bag and then placed something into his pocket. Mr. R█████ asked PO L████ why he put something into his pocket, and PO Hebert told him to relax. At the end of the incident, Mr. R█████ found all his vehicle belongings inside his car. Mr. R█████ asked PO L████ for his badge number. PO L████ was wearing his shield on a necklace. After Mr. R█████ asked him for the number, PO L████ turned away and when he turned back toward Mr. R█████ his shield was flipped over with the back facing front. Mr. R█████ told PO L████ he could not see the number, and PO Hebert told Mr. R█████ that he could. PO L████ flipped his shield back to its original side, and now there was "something like a rubber band" over the number that prevented Mr. R█████ from being able to read it. Mr. R█████ did not ask again for any officer's shield number.

PO L█████ resumed searching the center console and found an NYPD shield in there. The shield did not belong to Mr. R█████. His friend S█████ had left it in his car on an earlier date, and reportedly the shield belonged to a member of S█████'s family. Mr. R█████ had placed the shield in the center console for safekeeping. When PO L█████ discovered the shield, he told Mr. R█████ "You can go to jail for having stolen property. I can put the handcuffs on you and take you to jail." Mr. R█████ also repeated the statement as, "We'll take you to jail for having stolen property. Where did you steal this from?" Mr. R█████ felt that PO L█████ was becoming more confrontational, so he did not tell PO L█████ to whom the shield belonged. PO L█████ walked the shield over to PO W█████ and Mr. R█████ assumed that PO W█████ made inquiries about the shield because he then observed her on the phone.

At some point PO P█████ walked over to PO W█████ and then PO P█████ walked over to Mr. R█████ holding the shield. PO P█████ told Mr. R█████ that the owner of the shield was contacted and had good things to say about him. PO Hebert asked Mr. R█████ why he did not tell the officers that he knew a police officer. Mr. R█████ asked in response why he was not told why he was stopped. PO Hebert asked him, "Who are you?" Mr. R█████ said, "I told you my name is C█████ R█████. The officers left. Mr. R█████ was not summonsed or arrested.

On Monday, December 26, 2012, at approximately 5:00 p.m., Mr. R [REDACTED] and his business partner, I [REDACTED] P [REDACTED], drove to the 120th Precinct stationhouse to find out why he was stopped and who the officers were. When they got there, PO P [REDACTED] happened to be there. Mr. R [REDACTED] asked PO P [REDACTED] why he had stopped him. PO P [REDACTED] told him that the officers had observed him go in and out of the 99-cent store quickly and that they were conducting an investigation there because it is drug prone, and he told Mr. R [REDACTED] that he had escalated the situation by not disclosing where he had gotten the shield from. Mr. R [REDACTED] asked PO P [REDACTED] if it was permissible for officers to search his car without his permission, and PO P [REDACTED] nodded his head yes. Ms. P [REDACTED] asked PO P [REDACTED] for his name and shield number and all of the involved officers' names and shield numbers. PO P [REDACTED] wrote down his name and shield number for Ms. P [REDACTED]. PO P [REDACTED] told Ms. P [REDACTED] that she would have to ask the other officers for their names and shield numbers when she saw them. Then they left.

NYPD Statements:

Subject Officer: PO D

- *PO F [REDACTED] a w [REDACTED] male, [REDACTED] and brown eyes, was 26 years old at the time of the incident.*
 - *On the date of the incident, PO F [REDACTED] was assigned to the Street Narcotics Enforcement Unit (SNEU) in the 120th Precinct. He was dressed in plainclothes, and he worked from 6:00 a.m. to 2:35 p.m. He partnered with PO L [REDACTED] in an unmarked, black van, number 3416.*

Memo Book

At 12:10 a.m., he stopped C [REDACTED] R [REDACTED] at Hillside Avenue and Van Duzer Street. At 12:15 a.m., a partner of his, PO W [REDACTED] prepared a Stop, Question, and Frisk report for Mr. R [REDACTED] (encl. 8).

CCRB Testimony

PO P [REDACTED] was interviewed at the CCRB on February 10, 2012 (encl. 9). On December 23, 2011, at approximately 12:10 p.m., PO P [REDACTED] and his partner, PO L [REDACTED] were parked in the middle of the block on Broad Street across the street from the 99-cent store, and PO P [REDACTED] was in the driver's seat closer to the 99-cent store. They were in an unmarked black van that had no police lights or sirens. They were there observing Broad Street because it is a known drug

location that has also had robberies and shootings in the past.

Mr. R_____ arrived and double-parked in front of the 99-cent store. PO P_____ observed Mr. R_____ go inside and walk close to the cash register area, where he exchanged money for a small object. PO P_____ did not know what the object was and could not describe it, and he did not know if it was in any type of packaging. The person with whom he made the exchange was not standing behind the cash register. PO P_____ did not know if the other person was an employee or just a store occupant.

Mr. R_____ walked out of the store and drove away. PO P_____ radioed PO Hebert, who is a member of the SNEU team, and told him to stop Mr. R_____ for possibly engaging in a drug transaction. PO Hebert was partnered with PO W_____. PO P_____ and PO L_____ caught up with and drove behind PO Hebert and PO W_____. less than two blocks later, and PO Hebert and PO W_____ were driving directly behind Mr. R_____ with their turret lights on. PO Hebert could not see Mr. R_____’s vehicle from where he was.

Mr. R_____ stopped in a parking lot at Van Duzer Street and Hillside Avenue. Mr. R_____ did not stop in a parking space. He stopped at an angle and got out of his car without closing his door and walked briskly toward the officers at the back of his car. Mr. R_____’s approach caused PO P_____ to fear for his safety. At about this point, as well, PO Hebert told PO P_____ that as they were driving behind Mr. R_____ he had reached toward the front passenger seat of his vehicle as if he was trying to conceal something, and as Mr. R_____ was walking up to him, he had a bulge in one of his pockets (which PO Hebert later told him turned out to be a wallet). PO P_____ did not observe the bulge. PO Hebert stopped Mr. R_____ and began to frisk him. PO P_____ had already begun to make his way to Mr. R_____’s car, so he did not pay attention to where on Mr. R_____’s person that PO Hebert had frisked. PO P_____ did not know if Mr. R_____ was searched, and he did not see PO Hebert undo Mr. R_____’s pants. He did not know if Mr. R_____’s identification was ever obtained.

PO P_____ and PO L_____ walked over to Mr. R_____’s car. PO P_____ wanted to find out if Mr. R_____ had left the small object from the store inside his car, and he feared for his safety because Mr. R_____ had walked toward him briskly, and he was fearful about what Mr. R_____ may have had in his car because he interpreted Mr. R_____’s reported gesture of reaching to the front passenger seat while the officers were driving behind him as furtive.

PO P_____ walked to the driver’s side, and PO L_____ walked to the passenger side. PO P_____ looked inside the car through the open driver’s side door and observed an NYPD mini-shield and a PBA card inside a cup holder, and he grabbed them. A mini-shield is a courtesy shield that an NYPD officer can give to a close family member. PO P_____ searched nowhere else inside the car. PO L_____ however, opened the passenger side door and felt along the passenger’s side floor paneling. PO L_____ did not discover anything illegal or suspicious. The officers searched nowhere else inside the car. They did not open any containers or other doors.

PO P_____ stared at the PBA card and learned that it belonged to a female. PO P_____ asked Mr. R_____ to whom the shield belonged, and Mr. R_____ said he pled “the fifth.” PO P_____ told Mr. R_____ that because he would not speak up it looked like the card was possibly stolen, and without answers, the officers would have to take him to the 120th Precinct stationhouse to determine the shield’s ownership. PO P_____ said he did not threaten to arrest Mr. R_____ even though having stolen property is an arrestable offense. Mr. R_____ would not say to whom the shield belonged. PO P_____ felt that Mr. R_____ was acting irrational because he yelled, would not answer questions and kept asking why he was stopped even though PO P_____ told him that he possibly engaged in a drug transaction. PO L_____ never told Mr. R_____ “We ask the fucking questions.”

PO P_____ handed the mini-shield to PO W_____. and she investigated the shield’s ownership away from the other officers. PO W_____ later returned and told PO P_____ that she called the

owner of the shield, and she said it was all right that Mr. R█████ had her shield. PO P█████ conveyed this information to Mr. R█████ and Mr. R█████ responded by asking PO P█████ for his name and shield number. PO P█████ verbally stated his name and shield number to Mr. R█████. Mr. R█████ did not ask any other officers for their names and shield numbers. No officer attempted to hide his or her shield from Mr. R█████. PO P█████ warned Mr. R█████ about double-parking and then let him go.

On December 26, 2011, around 5:00 p.m., Mr. R_____ came into the 120th Precinct stationhouse along with Ms. P_____. PO P_____ was there working, and he spoke with Mr. R_____. Mr. R_____ again asked PO P_____ why he had been stopped and for his name and shield number. PO P_____ gave him his name and shield number and explained to him again why he was stopped, for possibly engaging in a drug transaction.

Subject Officer: PO S [REDACTED] L [REDACTED]

- *PO L [REDACTED] a w [REDACTED] male, [REDACTED] hair and brown eyes, was 27 years old at the time of the incident.*
 - *On the date of the incident, PO L [REDACTED] was assigned to SNEU in the 120th Precinct. He was dressed in plainclothes, and he worked from 6:00 a.m. to 2:35 p.m. He partnered with PO P [REDACTED] in an unmarked black van, number 3416.*

Memo Book

PO L█████ did not make an entry in his memo book about the incident (encl. 10).

CCRB Testimony

PO L█████ was interviewed at the CCRB on March 16, 2012 (encl. 11). Only the differences from his and PO Pantaleo's statement are noted in the following.

PO L█████ did not observe Mr. R█████'s arrival at the 99-cent store, and he did not see him go inside or engage in a drug transaction. PO L█████ was seated in the passenger seat. PO P█████ told PO L█████ he observed Mr. R█████ engage in a possible drug transaction. PO P█████ told him nothing else about the circumstances of the transaction. PO P█████ then told PO L█████ that Mr. R█████ placed a bag inside of his vehicle. PO L█████ first saw Mr. R█████ as he was driving away.

PO L█████ was consistent with PO R█████ about PO Hebert and PO W█████ first stopping Mr. R█████ in the parking lot. Mr. R█████ stopped his vehicle in the middle of the lot—not in a parking space. Mr. R█████ stepped out of his car and walked toward the back of his car where PO Hebert was. PO L█████ did not recall if Mr. R█████ shut his door when he got out or if he shut off his car. Mr. R█████ also appeared to be saying something as he was walking toward PO Hebert and talking with his hands, but PO L█████ could not hear Mr. R█████'s words because he was still inside his vehicle and beginning to step out.

When PO Hebert and Mr. R█████ got face to face, PO Hebert began to frisk him. PO L█████ was not able to detail the way in which Mr. R█████ was frisked, because right away PO Hebert told PO L█████ and PO P█████ to check Mr. R█████'s vehicle because Mr. R█████ had been reaching over to his passenger side by the floorboards before he pulled over, indicating to PO L█████ that Mr. R█████ may have been trying to conceal something. Later, PO Hebert told PO L█████ that he had frisked Mr. R█████ because as Mr. R█████ was walking toward him he saw a bulge "on his pocket." PO L█████ did not observe the bulge, and PO Hebert did not elaborate on its appearance or location. PO L█████ did not know if Mr. R█████ was searched.

PO L█████ walked to the passenger side of Mr. R█████'s car. He opened the front passenger door and searched the area in which Mr. R█████ could have possibly been concealing contraband. PO L█████ looked at the front passenger seat, the front passenger floorboard and

under the front passenger seat, and he opened up the glove compartment. He found no contraband or evidence confirming that Mr. R [REDACTED] had engaged in a drug transaction or concealed a weapon. PO L [REDACTED] further stated that he saw a detergent bottle inside Mr. R [REDACTED]'s vehicle, but he could not recall where he had seen it. PO L [REDACTED] did not search the back of the car.

PO P [REDACTED] meanwhile, searched the front driver's side of Mr. R [REDACTED]'s vehicle. PO L [REDACTED] did not pay attention to where PO P [REDACTED] searched. PO L [REDACTED] did not see PO P [REDACTED] open any closed containers. PO P [REDACTED] found an NYPD mini-shield inside Mr. R [REDACTED]'s car. PO L [REDACTED] did not know where in the car PO P [REDACTED] had found it.

PO L [REDACTED] and PO P [REDACTED] walked closer to Mr. R [REDACTED] and asked him to whom the shield belonged. Mr. R [REDACTED] loudly said he pled the fifth, and when he was asked again, he would say only that it was his "peoples'." PO P [REDACTED] told Mr. R [REDACTED] that if he did not answer to whom the shield belonged, the officers would have to take him to the stationhouse to further investigate how he got it. PO L [REDACTED] was consistent with PO P [REDACTED] about how the officers learned of the shield's ownership.

PO L [REDACTED] categorized Mr. R [REDACTED]'s behavior as "agitated" and uncooperative. PO L [REDACTED] never heard Mr. R [REDACTED] ask an officer for their shield number. No officer covered his shield number with a rubber band or a mourning band. PO L [REDACTED] was wearing a mourning band for a departed officer, but he stated that the mourning band is not easily moveable because it clasps to the wide part of his shield. No officer cursed at Mr. R [REDACTED].

Subject Officer: PO CHRISTOPHER HEBERT

- *PO Hebert, a w [REDACTED] male, [REDACTED] hair and brown eyes, was 28 years old at the time of the incident.*
- *On the date of the incident, December 23, 2011, PO Hebert was assigned to the Street Narcotics Enforcement Unit in the 120th Precinct. He was dressed in plainclothes, he worked from 6:00 a.m. to 2:35 p.m., and he partnered with PO K [REDACTED] W [REDACTED] in an unmarked, silver-colored Ford Taurus, vehicle number 1523.*

Memo Book

At 12:10 p.m., he stopped C [REDACTED] R [REDACTED] at Van Duzer Street for suspicion of criminal possession of a controlled substance because of a hand-to-hand transaction with a male black. PO Hebert wrote, "Put bag in car," which is what the observation officers had seen Mr. R [REDACTED] do. PO W [REDACTED] prepared a Stop, Question, and Frisk report in regard to Mr. Roberson's stop (encl. 12).

CCRB Testimony

PO Hebert was interviewed at the CCRB on March 7, 2012 (encl. 13). PO Hebert was roughly two blocks away from PO P [REDACTED] when PO P [REDACTED] radioed him. The SNEU team was in the area doing a set because Broad Street is drug prone.

Over the radio, PO P [REDACTED] instructed PO Hebert to stop C [REDACTED] R [REDACTED] who was driving away from Broad Street and Gordon Street in a silver Nissan because Mr. R [REDACTED] had just engaged in a hand-to-hand transaction indicative of accepting drugs for money with another black male, and then Mr. R [REDACTED] placed a bag inside his car. PO Hebert drove to the location and got behind Mr. R [REDACTED]'s vehicle, which was in motion.

As soon as PO Hebert caught up to Mr. R [REDACTED]'s vehicle, he turned on his lights and sirens. Mr. R [REDACTED] did not pull over. He continued to drive south. PO Hebert said that there was room for Mr. R [REDACTED] to pull over but he did not. While driving, Mr. R [REDACTED] reached over to the passenger side of his vehicle with his right arm and motioned like he was either concealing something under the passenger seat or grabbing something from underneath the passenger seat. PO Hebert did not see Mr. R [REDACTED] holding anything, but Mr. R [REDACTED]'s actions caused him to

fear for his safety.

Mr. R_____ ultimately stopped in the middle of the laundromat parking lot. Mr. R_____ quickly stepped out of his car, and as he was getting out, he adjusted his waistband with his hands. Mr. R_____ then walked toward PO Hebert, who told Mr. R_____ to stop and get back in his vehicle, but he did not and continued to walk toward PO Hebert. While Mr. R_____ was walking, he was asking why he was being stopped. PO Hebert was concerned that Mr. R_____ was "playing like he was confused" to distract him. When Mr. R_____ got face to face with PO Hebert, he frisked Mr. R_____ right away. PO Hebert said he frisked Mr. R_____ because he had reportedly engaged in a hand-to-hand transaction, made furtive movements in his car, readjusted his waistband, and walked toward PO Hebert despite being told not to.

PO Hebert frisked Mr. R_____'s waistband, his legs, his ankles and his pockets. PO Hebert felt a stiff bulge in one of Mr. R_____'s pockets. PO Hebert could not recall in which pocket he had felt the bulge, though he assumed it was the back right pocket. The bulge was big enough to not quite fit into PO Hebert's grasp. PO Hebert did not know what it was and it felt stiffer than a regular wallet. He reached into that pocket and pulled out the item, which turned out to be a wallet. PO Hebert felt no other bulges on Mr. R_____'s person. Regardless, PO Hebert placed his hands inside one of Mr. R_____ jacket pockets, but found nothing suspicious or illegal. PO Hebert said he searched Mr. R_____'s jacket pocket for the same reasons he frisked Mr. R_____. PO Hebert denied undoing Mr. R_____'s pants and exposing his private parts.

PO Hebert looked inside Mr. R_____'s wallet and pulled out his ID. Also inside his wallet were a PBA card and an identification that belonged to a female. PO Hebert was concerned that Mr. R_____ had stolen the wallet because he is not a female. PO Hebert asked Mr. R_____ to whom the PBA card belonged, and Mr. R_____ would only respond that it was his "peoples". PO W_____ stood with PO Hebert during the frisk and search.

At about the time that PO Hebert came face to face with Mr. R_____ PO Hebert told PO P_____ that he had observed Mr. R_____ making furtive movements at the passenger side of his vehicle while he was trying to pull him over. PO P_____ and PO L_____ after hearing this, went over to the passenger side of Mr. R_____'s vehicle. PO P_____ placed the upper half of his body inside the passenger side of the vehicle. PO Hebert could not elaborate on the vehicle search further because he was frisking Mr. R_____ at that time. He did not know if PO L_____ also searched Mr. R_____'s car. PO P_____ and PO L_____ were standing beside Mr. R_____'s vehicle for two minutes at most. PO Hebert thought PO P_____ said that he had found a bag with detergent inside of it sitting on top of Mr. R_____'s passenger seat. PO Hebert thought he was told this because he wrote "Put bag in car" in his memo book. To PO Hebert's knowledge, nothing illegal was found in Mr. R_____'s vehicle. PO Hebert was unaware of an officer discovering a mini-shield.

PO Hebert handed over the PBA card to PO W_____ to further investigate its ownership. PO P_____ came over to where PO Hebert was standing with Mr. R_____. PO P_____ explained to Mr. R_____ that if he did not cooperate he could be taken to a stationhouse for further investigation to clarify the card's ownership. PO Hebert categorized Mr. R_____'s responses and actions as "rude" and "unhelpful." No officer cursed at Mr. R_____.

PO Hebert could not recall if Mr. R_____ ever asked an officer for their name or shield number, and he could not recall if an officer provided their name and shield number. Mr. R_____ did, however, comment that one of the officers was trying to cover up his shield, though no officer was covering up his shield, and the officers told Mr. R_____ that. Either PO L_____ or PO P_____ did have a mourning band on their shield, but neither one placed the band over their shield number. Mr. R_____ was released after the PBA card's owner was contacted.

Subject Officer: PO K [REDACTED] W [REDACTED]

- *PO W [REDACTED] a w [REDACTED] female, [REDACTED] hair and hazel eyes was 28 years old at the time of the incident.*
- *On the date of the incident, PO W [REDACTED] was assigned to SNEU in the 120th Precinct. She worked from 6:00 a.m. to 2:35 p.m. She was dressed in plainclothes and she partnered with PO Christopher Hebert in a silver Ford, vehicle number 1523.*

Memo Book

At 12:10 p.m., C [REDACTED] R [REDACTED] was stopped at Hillside Avenue for criminal possession of a controlled substance. PO W [REDACTED] prepared a Stop, Question, and Frisk report (encl. 14).

Stop, Question, and Frisk Report

PO W [REDACTED] indicated that Mr. R [REDACTED] was stopped because his actions were indicative of engaging in a drug transaction, he was acting as a lookout, and he made furtive movements. Mr. R [REDACTED] was not searched, only frisked. He was frisked because he had on inappropriate attire and made furtive movements (encl. 15).

CCRB Testimony

PO W [REDACTED] was interviewed at the CCRB on March 22, 2012 (encl. 16). PO White's statement was generally consistent with PO Hebert's with the following additions:

She was consistent with PO Hebert with regard to what information PO P [REDACTED] had provided over the radio about Mr. R [REDACTED] and about how Mr. R [REDACTED] did not pull over until he reached the parking lot though he could have pulled over sooner.

Mr. R [REDACTED] stopped in the middle of the parking lot. He then reached down to the floor of the passenger side of his vehicle. To PO W [REDACTED] his movements indicated that he was dropping, hiding or reaching for something, which made PO W [REDACTED] feel unsafe. Instead of remaining in his vehicle, Mr. R [REDACTED] then hurriedly got out and walked toward the officers at the back of his car. Mr. R [REDACTED] was asking why he was being stopped.

All the officers were standing with Mr. R [REDACTED]. They explained to him why he was being stopped. PO P [REDACTED] and PO L [REDACTED] then walked over to Mr. R [REDACTED]'s car, and they leaned inside, but she could not recall who was on which side. She did not know where in the car they looked, including if they opened any containers. She did not convey to PO P [REDACTED] and PO L [REDACTED] about the movement Mr. R [REDACTED] had made to the passenger side of his car, nor did she hear her partner tell them either, but she said he might have.

In the meantime, PO Hebert frisked Mr. R [REDACTED] by patting his waistband and pants pockets. PO Hebert placed his hands inside of one of Mr. R [REDACTED]'s pockets and removed his wallet. PO W [REDACTED] could not recall which pocket PO Hebert had pulled the wallet out of. PO Hebert later told PO W [REDACTED] that he frisked Mr. R [REDACTED] because he observed a bulge on his person that turned out to be a wallet. PO W [REDACTED] never observed a bulge on Mr. R [REDACTED]'s person, because, she said, she was watching his hands when interacting with him. PO Hebert found a PBA card that belonged to a female inside of Mr. R [REDACTED]'s wallet, and he gave it to her to further investigate. PO W [REDACTED] thought that PO Hebert also gave her a mini-shield. She thought that the PBA card and mini-shield were together in Mr. R [REDACTED]'s wallet. She did not recall that the mini-shield was found in Mr. R [REDACTED]'s car.

PO W [REDACTED] walked away, and she spoke with the owner of the mini-shield who told her that it was all right for Mr. R [REDACTED] to have it. PO W [REDACTED] did not see PO Hebert unzip Mr. R [REDACTED]'s pants. She did not hear any officer threaten to arrest, curse at or refuse to provide their name and shield number to Mr. R [REDACTED]. She did not hear Mr. R [REDACTED] ask for names or shield numbers. She did not recall if any officer was wearing a mourning band.

NYPD Documents

120th Precinct Roll Call

According to the March 22, 2012, tour 2 roll call, Sgt. C [REDACTED] was assigned the Street Narcotics Enforcement Unit supervisor. PO P [REDACTED] and PO L [REDACTED] were partnered together in SNEU, and PO W [REDACTED] and PO Hebert were partnered in SNEU (encl. 18).

Status of Civil Proceedings

- As of September 19, 2012, C [REDACTED] R [REDACTED] has not filed a Notice of Claim with the City of New York for the incident more than six months after the filing deadline (encl. 19).

Civilian Criminal History

- As [REDACTED]
[REDACTED]

Civilian CCRB History

- This is the first CCRB complaint filed by C [REDACTED] R [REDACTED] (encl. 3).

Subject Officers CCRB History

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Conclusion

Identification of Subject Officers

Mr. R [REDACTED] obtained PO Pantaleo's name and shield number, and PO W [REDACTED] was the only female officer there. PO P [REDACTED] and PO W [REDACTED] indicated that PO L [REDACTED] and PO Hebert were the other two involved officers. Mr. R [REDACTED] could tell PO L [REDACTED] and PO Hebert apart because PO L [REDACTED] was taller. All the officers admitted interacting with Mr. R [REDACTED]. The vehicle stop has been pleaded against PO P [REDACTED] because he made the initial observation. The other allegations are pleaded according to what is indicated in Mr. R [REDACTED]'s and the officers' statements.

Investigative Findings and Recommendations

Allegation A—Abuse of Authority: PO D [REDACTED] P [REDACTED] stopped the car in which C [REDACTED] R [REDACTED] was an occupant.

Mr. R [REDACTED] said he bought detergent from the 99-cent store and was then stopped in the laundromat's parking lot in his vehicle. The location of the stop is a parking lot, and the investigation credited that Mr. R [REDACTED] had detergent in his car because it was noted in PO Hebert's memo book that Mr. R [REDACTED] had a bag in his car and POs P [REDACTED] and L [REDACTED] said they saw the bottle in his car.

Only PO P [REDACTED] observed Mr. R [REDACTED] go into the 99-cent store. He made the observation from his driver's seat, which was facing the store, across the street. He said he ordered Mr. R [REDACTED]'s stop because he saw Mr. R [REDACTED] exchange money for a small object inside the 99-cent store with a person near the cash register. PO P [REDACTED] did not know if the other person was

an employee or not. That other person was not stopped, and based on PO Hebert's statement, all that is known about that other person is that he was a black male. PO P [REDACTED] nonetheless, found Mr. R [REDACTED]'s actions to be indicative of engaging in a drug transaction.

In order for an officer to stop someone in their vehicle for a non-vehicle infraction, the officer must have reasonable suspicion that the stopped person committed a crime. People v. Peterson, 698 N.Y.S.2d 777 (1999 – Sup. Ct. Ny Cty). (encl. 1A-1B).

The investigation determined PO P [REDACTED] did not have reasonable suspicion that Mr. R [REDACTED] had committed a crime because his basis for stopping Mr. R [REDACTED] was what he observed Mr. R [REDACTED] do inside the 99-cent store, but he did not have a close-range view of Mr. R [REDACTED] from across the street, and he had a complete lack of information about whether the person with whom Mr. R [REDACTED] made the exchange was a store employee. Mr. R [REDACTED]'s actions inside the store could equally, if not more so, have been interpreted as innocuous or lawful rather than as a crime. More likely than not, Mr. R [REDACTED] exchanged money with an employee for a bottle of detergent, which is not a crime. The preponderance of the evidence therefore indicated that PO P [REDACTED] ordered the stop of Mr. R [REDACTED] without reasonable suspicion he had committed a crime, and it is recommended that **Allegation A be substantiated**.

Allegation B—Abuse of Authority: PO Christopher Hebert frisked C [REDACTED] R [REDACTED]

PO Hebert admitted to frisking Mr. R [REDACTED]. The officers stated consistently that Mr. R [REDACTED] caused them to fear for their safety, but Mr. R [REDACTED]'s statement was in opposition to theirs, claiming that he was stopped for an unknown reason and that he was "searched" before he had a chance to give the officers reason to fear for their safety.

PO Hebert and PO W [REDACTED] said that Mr. R [REDACTED] reached to the passenger side of his vehicle as if he was trying to grab or conceal something. Mr. R [REDACTED] was never observed holding anything, and PO W [REDACTED] said Mr. R [REDACTED] made the motion after he stopped his car, whereas PO Hebert said he did it while the officers were driving behind him. All the officers stated that Mr. R [REDACTED] approached them in the parking lot, but none of them actually saw a bulge on Mr. R [REDACTED]'s person as he was allegedly coming toward them (though PO Hebert later felt a bulge on Mr. R [REDACTED]'s person). PO Hebert stated that he frisked Mr. R [REDACTED] because he made a potential furtive movement in his car, walked toward the officers, talked with his hands, adjusted his waistband, and was "playing like he was confused" by asking why he was being stopped when he was told to stop walking.

An officer can frisk an individual if the officer has reasonable suspicion that the person is armed. People. V. Debour, 40 N.Y.2d 210 (1976). (encl.1C-1M). Suspicion of a drug offense alone does not provide reasonable suspicion that a person possesses a weapon. People v. Gonzalez, 295 A.D.2d 183 (2002). (encl. 1N-1O).

Here, the totality of information was insufficient for PO Hebert to reasonably believe Mr. R [REDACTED] had a weapon. As indicated above, the observation made by PO P [REDACTED] at the store did not provide the officers with reasonable suspicion that Mr. R [REDACTED] had committed a crime. Even if it did, the officers did not have reasonable suspicion he was armed. He was not observed with a bulge on his person, and a reach toward the passenger side of his vehicle, at a time when Mr. R [REDACTED] was unaware of the officers' presence, cannot be considered furtive. Thus the investigation determined PO Hebert frisked Mr. R [REDACTED] without a sufficient reason to believe Mr. R [REDACTED] had a weapon. It is therefore recommended that **Allegation B be substantiated**.

Allegation C—Abuse of Authority: PO Christopher Hebert searched C [REDACTED] R [REDACTED]

It is undisputed that PO Hebert searched Mr. R [REDACTED]. Mr. R [REDACTED] alleged that PO Hebert placed his hands inside his front and back pants pockets, removed his wallet, and undid his pants.

PO W [REDACTED] wrote in the Stop, Question, and Frisk report that Mr. R [REDACTED] was not searched,

but in her CCRB statement she said that PO Hebert placed his hands inside Mr. R_____’s pants pockets and removed his wallet. PO Hebert said he searched Mr. R_____ for the same reasons he frisked him. He added, however, that he felt a bulge in one of Mr. R_____’s pockets during the frisk, though he could not recall which pocket. He did not know what the bulge was, and he described its size as not quite being able to fit in his grasp. He said the bulge felt stiffer than a wallet. He reached inside the pocket and the bulge turned out to be a wallet. PO Hebert said he did not observe or feel any other bulges on Mr. R_____’s person but he placed his hand inside one of Mr. R_____’s jacket pockets.

An undefined bulge, which can be caused by many innocuous objects, does not provide reasonable suspicion that a person possesses a weapon and is an insufficient basis for an officer to perform a search. In the matter of David B., 172 A.D.2d 828 (1991). (encl. 1P-1Q).

A wallet is not the size and shape of an object that could be reasonably mistaken for a weapon. PO Hebert further went on to search one of Mr. R_____’s jacket pockets that he had already determined through a frisk had nothing in it. The investigation thus determined that PO Hebert had an insufficient basis for searching Mr. R_____ and it is recommended that **Allegation C be substantiated.**

Allegation D—Abuse of Authority: PO D_____ P_____ searched the car in which C_____ R_____ was an occupant.

Allegation E—Abuse of Authority: PO S_____ L_____ searched the car in which C_____ R_____ was an occupant.

It is undisputed that PO P_____ and PO L_____ searched the front sides of Mr. R_____’s vehicle. Mr. R_____ could not recall which officer went to which side, but he claimed his glove compartment was searched and thought PO L_____ from whichever side he was on, opened the center console because that was where he had stored the NYPD mini-shield that he said PO L_____ discovered.

PO Hebert told PO L_____ and PO P_____ that Mr. R_____ reached to the passenger side of his vehicle as if he were trying to conceal something. PO L_____ said he searched the front passenger side, including the adjacent floorboard, under the front passenger seat, and he opened the glove compartment. PO Panataleo said he only looked into the car on the driver’s side, and he ended his search when he found an NYPD mini-shield in a cup holder, which he temporarily seized. PO P_____ searched Mr. R_____’s car because of what PO Hebert had told him and because he wanted to find out if Mr. R_____ placed the small object from the 99-cent store in his car. Neither officer found evidence indicating that Mr. R_____ had engaged in a drug transaction or was concealing a weapon.

In order for officers to perform a vehicle search that includes closed containers, they must have probable cause to believe that the vehicle contains a weapon, contraband, or evidence of a crime. People v. Smith, N.Y. App. Div. 5857 (2012 – 2nd Dept.) (encl. 1R-1S).

As indicated above, the observation made by PO P_____ at the store did not provide the officers with reasonable suspicion that Mr. R_____ had committed a crime. Even if it did, there was no probable cause to search the glove compartment. In addition, prior to searching the glove compartment, PO L_____ and PO P_____ performed a limited search that did not reveal any evidence of criminality, further indicating they had no basis to search the glove compartment. Because the investigation determined that PO P_____ and PO L_____ searched Mr. R_____’s car without probable cause, it is recommended that **Allegations D and E be substantiated.**

Allegation F—Discourtesy: PO S_____ L_____ spoke rudely to C_____ R_____

Mr. R_____ alleged that he asked PO Panataleo and PO L_____ why they were searching his car, and PO L_____ responded to him, “We ask the fucking questions.”

Though all the officers stated that Mr. R█████ was acting “irrational” by asking over and over why he was being stopped and was refusing to answer questions, all the officers stated they did not hear PO L████ curse at Mr. R█████ and PO L████ denied cursing at Mr. R█████. Due to conflicting statements, the investigation could not determine by a preponderance of the evidence if PO L████ told Mr. R████ “We ask the fucking questions,” and it is recommended that **Allegation F be unsubstantiated**.

Allegation G—Abuse of Authority: PO S████ I████ refused to provide his shield number to C████ R████

Mr. R█████ alleged that when he asked PO L████ for his shield number, PO L████ intentionally flipped over his shield and then when he faced it forward again there was “something like a rubber band” covering the number. Mr. R█████ told PO L████ he could not see the number, and PO Hebert told him he could. Mr. R█████ did not learn the number.

PO P████ said that Mr. R█████ asked him only for his name and shield number, and he provided it to him. PO W████ did not hear Mr. R█████ ask for names or shield numbers, PO L████ said Mr. R█████ never asked, and PO Hebert could not recall if Mr. R█████ made a request, but he acknowledged a discussion of officer shields because he and other officers told Mr. R█████ no officer was covering up their shield.

PO L████ said he had a mourning band on his shield, but he denied covering up his number with it and said to do so would have been difficult. It is possible PO L████ covered up his shield number, but there is not a preponderance of evidence to prove he did. Because the investigation could not determine with a preponderance of evidence that PO L████ covered up his shield number and thus refused to provide it, it is recommended that **Allegation G be unsubstantiated**.

Allegation H—Abuse of Authority: PO S████ I████ threatened to arrest C████ R████

Mr. R█████ alleged that when PO L████ discovered the NYPD mini-shield, he told Mr. R█████ “You can go to jail for having stolen property. I can put the handcuffs on you and take you to jail.” When Mr. R█████ was asked to repeat PO Lopez’s statement, he alleged PO L████ said, “We’ll take you to jail for having stolen property. Where did you steal this from?”

PO P████ and PO L████ said they asked Mr. R█████ about the shield’s ownership and Mr. R█████ would not tell them. Both officers also said they told Mr. R█████ if he did not answer about the shield’s ownership they would have to take him to the stationhouse to further investigate the matter.

If PO L████ had made the threat it would have been unjustified because the officers had insufficient information to determine that the shield was stolen. However, the investigation could not determine PO Lopez’s exact statement because Mr. R█████ was inconsistent about it, and the officers said they did not threaten to arrest Mr. R█████. Due to conflicting statements, the investigation could not determine if PO L████ threatened to arrest Mr. R█████ and it is recommended that **Allegation H be unsubstantiated**.

Allegation I—Other Misconduct: PO S████ I████ failed to prepare a memo book entry as required.

PO L████ admitted to participating in Mr. R█████’s stop and searching his car, yet he failed to make a memo book entry about it. Patrol Guide Section 212-08 indicates that all officers below the rank of captain must maintain an activity log/memo book listing their assignments and tasks performed (encl. 1T-1U). Because PO L████ participated in the stop of Mr. R█████ and did not make a memo book entry about it as required under Patrol Guide Section 212-08, it is recommended that PO L████ be cited for **Other Misconduct for Allegation I**.

Team: _____

Investigator: _____
Signature _____ Print _____ Date _____

Supervisor: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____

Reviewer: _____
Title/Signature _____ Print _____ Date _____